

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH M. HOWARD and DEPARTMENT OF THE ARMY,
HEADQUARTERS, U.S. ARMY ARMOR CENTER, Fort Knox, KY

*Docket No. 00-856; Submitted on the Record;
Issued February 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective December 4, 1999 on the grounds that his work-related disability had ceased.

On January 20, 1989 appellant, then a 54-year-old family housing inspector, sustained multiple injuries when he was struck by a garbage truck in the course of his federal employment. He did not return to work. The Office accepted his claim for multiple contusions, back muscle strain and lumbar subluxation. Appellant was placed on the periodic rolls on March 7, 1989 and paid appropriate compensation benefits.

In a May 4, 1999 work capacity evaluation, Dr. James G. Sills, a Board-certified family practitioner, stated that appellant could not work eight hours per day due to his long-standing osteoarthritis and radiculopathy of the left hip and knees. Dr. Sills indicated that appellant could work one or two hours per day, with no anticipation of an increase in his hours due to his condition being of a deteriorative state. He described appellant's limitations as sitting, reaching and reaching above the shoulder for no more than four hours per day; walking, no more than one hour per day; standing, no more than two hours per day; repetitive movements of the wrists and elbow, no more than six hours per day; no twisting; and operating a motor vehicle, no more than eight hours per day.

In a June 30, 1999 report, Dr. Sills stated that appellant had osteoarthritis and radiculopathy of the left hip and knee, which was a direct result of the aging process, complicated by and probably precipitated by the injury that he sustained several years ago. He stated that appellant obtained significant improvement with physical therapy and that the fibro muscular strain complicated by his progressive degenerative joint disease changes was the cause. Dr. Sills further opined that appellant's progressive degenerative joint disease was attributable to the natural aging process, but the severity of his arthritic condition, in his opinion, resulted from his accident 10 years ago. He stated that questions regarding appellant's ability to work were

ambiguous and extremely difficult to answer and it was his opinion that appellant was unable to do any work that required standing, stooping, bending, etc. Dr. Sills related that when appellant sat for any period of time, he had severe pain, if he sat for an hour, he had discomfort and pain trying to get up, and although he indicated that appellant could drive a motor vehicle for eight hours, he did not mean that he “would drive to Northern Florida nonstop.” He noted that he had reviewed the attached job description for a family housing inspector, but doubted that appellant could perform the position and stated that he found this question “impossible” to answer. Dr. Sills further opined that appellant could perform light-duty part-time work.

The Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. Robert L. Keisler, a Board-certified orthopedist, for a second opinion evaluation as to the nature and extent of his work-related disability. In a September 15, 1999 report, Dr. Keisler examined appellant and noted his history of injury and treatment. He observed that on physical examination, appellant appeared somewhat depressed. Dr. Keisler noted that appellant walked slowly, but did not show pain with normal activities and climbed onto the examining table without difficulty. He noted signs of some difficulty twisting into a straight position and that standing revealed moderate round back deformity (dorsal kyphosis). Dr. Keisler indicated that on general observation, appellant would stand for a period of 15 to 20 minutes and then sit. He stated that x-rays of the lumbar spine revealed a transitional configuration, that appeared stable, with no disc space and significant changes throughout the entire spine that appeared to be overall osteoporosis, with end plate irregularity at almost all levels.

Dr. Keisler stated that his impression was post-traumatic chronic pain syndrome. He explained that the accident appeared to be a minor accident with an overreaction of pain all over, reducing to the low back region, suggestive of an overreaction to a minor trauma that is the initial step of unusual and unexplainable pain syndrome. Dr. Keisler observed that for 10 years there was constant pain with minimal objective physical findings other than tenderness to palpation, slight reduction of mobility of the spine and pain at the extremes, with an additional finding of osteoporosis, seen with acute neurovascular changes such as reflex sympathetic dystrophy. He also noted multiple levels of degenerative changes, mostly in the upper back area, which were neither greater nor excessive for his age. Dr. Keisler stated that there may be a relationship to depression or other psychogenic disorders with no known successful treatment. He stated that there was no evidence that the current problems were related to the initial injury as it would not be expected to produce chronic symptoms. Dr. Keisler indicated that the current problems and symptoms appeared to be a post-traumatic chronic pain syndrome, present since 1989 and did not require a specific anatomic diagnosis. He further stated that arthritis or radiculopathy of the hip would not be related to any specific traumatic event that would have occurred in 1989, as they were normal changes expected at his age and did not appear to be producing the present symptoms.

Dr. Keisler stated that he reviewed the initial emergency room x-rays which showed no abnormality and a notation indicating full studies were performed that were normal, including the magnetic resonance imaging (MRI) scan. He also noted that the initial injury occurred with a vehicle travelling at five miles per hour. Dr. Keisler stated that the subjective points outweighed the objective findings, which was typical of chronic pain syndrome. He further noted that

appellant was able to perform the activities of a housing inspector, limited to four hours a day, with allowance for periods of rest. Dr. Keisler described the symptoms that resulted from lumbar chronic pain syndrome which included unguarded bending, lifting, twisting movements, or positions of the spine or extended periods of time in any one position (even sitting) whereas the increasing symptoms would require a change in that position or activity. He indicated that periods of rest would be needed when symptoms have increased and overall endurance of symptoms reduces the time for the activity to be performed. Dr. Keisler stated that all restrictions could be considered permanent and physical therapy could not be justified as it continued beyond a six-week trial without results. Additionally, he recommended treatment for the chronic pain syndrome and treatment of any depression present, as well as increasing his general body conditioning.

In an October 13, 1999 addendum, Dr. Keisler indicated that he personally believed that appellant's chronic pain syndrome was the result of his preexisting disposition and a painful stimulus could provoke the first or any other period of symptoms, but the initial trauma itself was not the causation of the condition. He stated he would recommend psychiatric consultation. Dr. Keisler stated further that the work-related injuries were only responsible for the temporary symptoms that would expect it to have recovered in a short term. He opined that all of appellant's current symptoms were compatible with chronic pain syndrome. Dr. Keisler stated that appellant had degenerative changes which were not unusual or excessive for his age and could be responsible for a temporary exacerbation of his symptoms but not a significant underlying impairment of function. He stated further that the current symptoms were in compliance with symptoms of degenerative disc disease and that degenerative disc disease was a normal aging process and not related to the employment injury in 1989.

On October 20, 1999 the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage loss and medical benefits was being terminated because he no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinions of Drs. Sills and Keisler, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

By decision dated November 24, 1999, the Office finalized its proposed termination of benefits. The Office indicated that Dr. Keisler's opinion remained the weight of the medical evidence.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective December 4, 1999, on the grounds that his work-related disability had ceased by that date.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability

¹ *Lawrence D. Price*, 47 ECAB 120 (1995).

has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.⁵

Dr. Sills, appellant's treating physician, indicated in his June 30, 1999 report that appellant had osteoarthritis and radiculopathy of the left hip and knee, which was a direct result of the aging process complicated by and probably precipitated by the injury that he sustained several years ago.⁶ He suggested that fibro muscular strain, complicated by his progressive degenerative joint disease changes was the cause. Dr. Sills stated further that appellant's progressive degenerative joint disease changes could be attributable to the natural aging process, but the severity of his arthritic condition, in his opinion, resulted from his accident 10 years ago. He was unable to answer questions regarding appellant's ability to work as he stated they were ambiguous or extremely difficult to answer. Dr. Sills further stated appellant was unable to do any work that required standing, stooping, bending, etc and sitting. He indicated that appellant could drive but not "to Northern Florida nonstop." Dr. Sills reviewed appellant's job description and doubted he could do the job, finding the question "impossible to answer." He found that appellant was capable of light-duty part time and recommended ongoing physical therapy. Dr. Sills failed to discuss how or why appellant continued to be disabled due to his January 20, 1989 accepted employment injury. Absent a rationalized medical opinion in support of his conclusions, the report is of limited probative value.⁷ Additionally, Dr. Sills did not explain the process of how the accepted conditions of multiple contusions, back muscle strain and lumbar subluxation, could cause disability for more than 10 years.⁸

² *Id*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id*.

⁵ See *Connie Johns*, 44 ECAB 560 (1993).

⁶ The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

⁷ See *Connie Johns*, 44 ECAB 560, 569 (1993), citing *Philip J. Deroo*, 39 ECAB 1294, 1298 (1988) (finding a physician's opinion on causal relationship must be one of reasonable medical certainty, supported by affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background).

⁸ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

The Office accepted that appellant sustained multiple contusions, back muscle strain and lumbar subluxation. The Office paid appropriate medical benefits and subsequently referred appellant to Dr. Keisler for a second opinion evaluation. The Board finds that the weight of the medical evidence rests with Dr. Keisler who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had no continued disability from his accepted employment injury. Although he advised that appellant could work as a housing inspector for four hours a day with restrictions, he opined that the restrictions were not due to the accepted employment injury, but rather to his preexisting disposition and his chronic pain syndrome. Dr. Keisler further explained that appellant's work-related symptoms were relatively minor as the vehicle was travelling five miles per hour. He noted further that the initial emergency room x-rays showed no abnormality and that full studies were performed that were normal, including the MRI scan. Dr. Keisler explained that with respect to the accepted employment injury, further medical treatment was unnecessary. He also observed that subjective complaints from appellant outweighed the objective findings, noting this was typical for chronic pain syndrome. Dr. Keisler stated that all restrictions could be considered permanent and physical therapy should be discontinued as it did not produce results beyond the six-week trial period. He recommended treatment for appellant's depression, which he opined stemmed from his chronic pain syndrome. In an October 13, 1999 addendum, Dr. Keisler stated that appellant's chronic pain syndrome was a result of his preexisting disposition and a painful stimulus could provoke the first of any period of symptoms, but the initial trauma was not the cause of the condition. He further opined that the work-related injuries were only responsible for the temporary symptoms and he would expect it to have recovered in a short term. Dr. Keisler explained that appellant's current symptoms were in compliance with symptoms of degenerative disc disease, a normal part of the aging process and not related to the employment injury in 1989. Because he provided the only rationalized medical opinion of record addressing whether appellant continued to suffer residuals of his accepted employment injury, his opinion constitutes the weight of the medical evidence.⁹

The Board therefore finds that Dr. Keisler's report established, at that time, that appellant ceased to have any disability or condition causally related to his employment injuries, thereby justifying the Office's November 24, 1999 final termination of wage loss and medical benefits effective December 4, 1999.

⁹ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The November 24, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 7, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member